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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

JOHN LUND,

Plaintiff,

v.

UNITED STATES OF AMERICA and JOHN
DOES 1 -15.

Defendants.

Case No.: 3:19-cv-02015-AC

**DECLARATION OF JOHN
LUND**

STATE OF OREGON)
)ss.
County of Tillamook)

I, John Lund, swear and affirm as follows:

1. I am the Plaintiff and the owner of the real property in Tillamook County at issue in the above referenced action. I am over the age of 18 and competent to testify to the matters herein. I write this declaration in support of opposition to the Defendant's Motion to Dismiss.
2. I acquired my property from a former wife of Bill Stewart both of whom I knew since childhood. Prior to his death, he explained how he had given the Bonneville Power Administration ("BPA") permission to cross the property to access powerlines located on an easement it had acquired on land north of my property during the mid-1950s. The easement touches a small part of my property, but the roadway Mr. Stewart allowed BPA to use to reach the easement is located well outside the boundaries of that

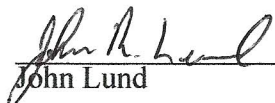
easement.

3. I continued to give BPA permission to cross the property, but it never spent any time or money maintaining the roadway.
4. In August 2014, I expressly revoked BPA's permission to continue using my property.
5. After I revoked BPA's permission to enter my property, its employees and contractors would still come on my property and use the roadway. Occasionally, I would grant them limited permission to come onto the property for specific projects like removing hazard trees and surveying a potential road easement, but other times the BPA's employees would come onto the property without my consent.
6. Both before and after I revoked BPA's permission to continue using my property, BPA approached me at various times with various offers to purchase an easement to use the roadway on the property. However, we still have not been able to agree to a price or on the terms of an easement.
7. At no point in my many discussions with BPA's representatives have they ever claimed that the agency had an easement by necessity to use the roadway.
8. I am familiar with the layout and topography of the area around my property and there are other ways to access the BPA easement without crossing my property. In fact, one BPA employee explained that he has accessed the easement via another road that is entirely upon adjoining parcels. I understand the road is more challenging, but it is no worse than some of the other roads BPA uses to access their power lines in other parts of the Tillamook Forest. Furthermore, I am aware of other overgrown logging roads which, if reopened, could provide alternative access to the structure in question from their easement one structure to the East.
9. Earlier this year, and after I filed this lawsuit, BPA and its contractors again came onto my property without my permission. When I confronted them, a BPA representative explained that they had asked and received permission from Reehers Homestead, Inc., a corporation for which I am a board member. Unlike the BPA, this company does have an easement to use the roadway. However, the 89-year-old individual the BPA

employee said she spoke with to receive permission no longer holds a position with the company.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

Dated:


John Lund

DECLARATION OF SERVICE

I hereby certify that I served the foregoing **Declaration of John Lund** on the following:

Jared D. Hager
Assistant US Attorney
US Department of Justice
1000 SW Third Ave., Suite 600
Portland, Oregon 97204
Email: Jared.Hager@usdoj.gov
Attorneys for Defendants

by the following method(s):

- X by **e-service, emailing** a full, true and correct copy thereof to the parties at the email addresses shown above, which are the last-known email addresses of the parties, on the date set forth below.
- by **mailing** a full, true and correct copy thereof in a sealed, first-class, postage pre-paid envelope, addressed to the last-known address of the parties as shown above, and deposited with the United States Postal Service at Portland, Oregon, on the date set forth below.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

Dated: March 18, 2020

/s/ Kenneth P. Dobson
Kenneth P. Dobson, OSB No. 002435
Of Attorneys for Plaintiff